

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RICHARD COX,

Defendant-Appellant.

UNPUBLISHED

December 20, 2011

No. 299279

Wayne Circuit Court

LC No. 10-002363-FH

Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of receiving and concealing stolen property valued between \$1,000 and \$20,000, MCL 750.535. He was sentenced to 3 ½ to 10 years' imprisonment. We affirm.

Defendant argues that the trial court erred in denying his motion for directed verdict and that the prosecution failed to present evidence sufficient to find him guilty of receiving and concealing stolen property valued between \$1,000 and \$20,000. We disagree.

This Court reviews de novo a trial court's decision on a motion for directed verdict. *People v Martin*, 271 Mich App 280, 320; 721 NW2d 815 (2006). The Court construes the prosecution's evidence in the light most favorable to the prosecution in determining if a rational trier of fact could conclude the essential elements of the crime were proven beyond a reasonable doubt. *Id.* When addressing a claim of insufficient evidence, this Court also uses a de novo standard of review. *People v Parker*, 288 Mich App 500, 503; 795 NW2d 596 (2010). The Court construes the evidence in the light most favorable to the prosecutor in determining if a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

To sustain a conviction for receiving and concealing stolen property valued between \$1,000 and \$20,000, the prosecution must establish beyond a reasonable doubt:

(1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the

defendant that the property received or concealed was stolen. [*People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002).]

Defendant argues that the prosecution failed to establish that he had the necessary intent and that the value of the stolen property was greater than \$1,000.

There is sufficient evidence in the record for a rational jury to conclude that defendant had actual or constructive knowledge that the property was stolen. Receiving and concealing stolen property is not a specific intent crime, *People v Ainsworth*, 197 Mich App 321, 325; 495 NW2d 177 (1992), instead, the prosecution has to prove that the defendant knew or had reason to know or reason to believe that the property was stolen, MCL 750.535. Christopher Gray testified that, when he arrived home, he discovered his garage door open. He also saw Terry Cox, defendant's nephew and codefendant, on the front porch of his home. Gray stated that it appeared Cox was leaving the brownstone adjacent to his home. Gray then saw defendant walking between Gray's property and the house next door. The police later determined that the perpetrator(s) entered Gray's home through the basement of the adjacent brownstone. Viewing this evidence in the light most favorable to the prosecution, the jury could infer that, even if defendant did not participate in stealing the property, defendant was aware of the theft and Cox's participation in it because he was present when the theft occurred.

In addition, about one and a half hours after Gray arrived home, he went to a scrap yard where he saw defendant standing near a scale, cutting a tire off one of the rims missing from Gray's garage. Other missing items, including two other rims, an intercooler, and a box of copper wiring, lay on the ground near defendant's feet. A jury could reasonably conclude that this unconventional method of removing a tire from the rim, coupled with defendant's attempt to sell the rim as scrap metal at a scrap yard less than two hours after the property was discovered missing, shows that defendant knew or had reason to know or reason to believe that the property was stolen.

There is also sufficient evidence in the record for a rational jury to conclude that the value of the stolen items which defendant possessed was between \$1,000 and \$20,000. The value of the stolen property is determined by its fair market value at the time and place of the theft, assuming the sale is occurring between a willing buyer and seller on an open market. *People v Johnson*, 133 Mich App 150, 153; 348 NW2d 716 (1984). Defendant argues that the only evidence the prosecution presented regarding the fair market value of the intercooler and rims was the testimony of Gray, the owner. While it is true that Gray's testimony was the only evidence presented regarding the fair market value of the stolen property, a property owner's testimony can be enough to establish the value of the property as long as his valuation is not "based on personal or sentimental value." *Pratt*, 254 Mich App at 429.

In this case, Gray testified that he paid \$250 to replace one of the rims for the Merkur and \$1,200 for the intercooler. Defendant had the opportunity to cross-examine Gray on this issue and did question Gray regarding his lack of purchase receipts for these items. It is the responsibility of the fact-finder to judge the credibility of witnesses and it was reasonable for the jury to find Gray's testimony credible and rely on it in determining the fair market value of the stolen property was more than \$1,000.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause